

**Before the
Montgomery County Common Ownership Commission
Montgomery County, Maryland**

In the matter of:

The Council of Unit Owners
Of Scenery Pointe Condominium
c/o Vanguard Management Associates
P. O. Box 39
Germantown, MD 20875

Complainant,

v.

John Glennie
19909 Gateshead Circle
Germantown, MD 20876

Respondent.

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Case No. 780-G
February 21, 2006

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to §§ 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

The Council of Unit Owners of Scenery Pointe Condominium (Complainant) sent several notices to the Respondent, John Glennie requesting access to Respondent's condominium unit within the Scenery Pointe Condominium in order to perform required maintenance to the chimney flues. As access was not provided, the Complainant filed a complaint with the Office of Common Ownership Communities against John Glennie (Respondent) seeking approval to gain access to Respondent's unit to clean the chimney.

The dispute was presented to the Commission on Common Ownership Communities for action pursuant to § 10B-11(e) of the Montgomery County Code in November, 2005, and the Commission accepted jurisdiction. A hearing was held on January 19, 2006. Respondent John Glennie did not appear at the hearing. The Complainant was represented by counsel and through the testimony of its witnesses, the Community Manager and the President of the Board of Directors. The Commission's Exhibit 1 and Complainant's Exhibits were accepted into evidence at the hearing.

Jurisdiction

The record (Commission Exhibit 1) shows that the Respondent was sent several notices concerning this dispute by Commission's staff, to which he never responded:

1. a letter of July 7, 2005, sent by regular mail, enclosing a copy of the complaint;
2. a letter of August 4, 2005, postmarked August 5, 2005, reminding Respondent of the complaint, sent by certified mail, and returned "Unclaimed", and sent again by regular mail on August 25, 2005;
3. a notice of November 23, 2005, advising Respondent of the date selected for a public hearing in this matter and advising him of his rights under the Montgomery County Administrative Procedures Act, sent by certified mail (the record does not show what happened to this notice).

Under Section 2A-6 of the Montgomery County Administrative Procedures Act, notice of charges and of a hearing date may be sent by certified mail. There is no requirement the County prove the mail was received. Under Section 10B-13(c) of the Common Ownership Communities Act, if a party is properly served under the Administrative Procedures Act and fails to appear at the hearing, the hearing authority may award to the other party any relief warranted by the facts. The Commission finds that the Respondent was properly notified of the charges against him and of the hearing date, and that it had jurisdiction to proceed with the hearing.

Findings of Fact

1. Complainant is the Council of Unit Owners of the Scenery Pointe Condominium and is responsible for the maintenance and repair of the limited common element chimney flues within the condominium.

2. Complainant's contractor required entry within units in order to clean the chimneys which was the recommended maintenance and which was reasonably necessary for public safety of the unit owners to prevent a fire hazard.

3. Respondent is the owner of record of a condominium unit at 19909 Gateshead Circle. Complainant sent notices to the Unit Owners and Respondent in February, March and April 2005 and requested access to units for the purpose of maintaining the chimney flues. The first notice was sent to all unit owners but omitted the address of Respondent's Unit.

4. Both the Maryland Condominium Act and the Association's Bylaws provide for a right of access to units for making repairs to common elements and repairs reasonably necessary for public safety. Article V, Section 24 of the Association's Bylaws provides:

A Unit owner hereby grants a right of access to his Unit...for the purpose of making inspections or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements in his Unit...provided that requests for entry are made in advance and that such entry is

at a time reasonably convenient to the Unit owner.

Section 11-125(e) of the Maryland Condominium act provides:

The council of unit owners or its authorized designee shall have an irrevocable right and an easement to enter units to make repairs when the repairs reasonably appear necessary for public safety or to prevent damage to other portions of the condominium. Except in cases involving manifest danger to public safety or property, the council of unit owners shall make a reasonable effort to give notice to the owner of any unit to be entered for the purpose of repair.

5. No one was home to provide access to Respondent's unit on any of the dates and times requested. Respondent did not contact Complainant to request an alternate more convenient date.

6. All unit owners, except for Respondent, provided access to their units on one of the dates requested in order to permit the required maintenance of the chimneys.

7. Complainant sent a Notice of Hearing to be held on May 16, 2005 if access was not provided as requested. This Notice is combined with an additional Notice of Need to Access the Unit on May 14, 2005 and a Notice of Violation if access was not provided.

8. Respondent did not provide access on May 14, 2005 and did not appear at the hearing on May 16, 2005. Complainant sent a Notice of Results of Hearing stating that Respondent was found to be in violation for failure to provide access, that a \$200 fine had been imposed and that this proceeding would be commenced in order to seek an Order for access to the unit.

9. Complainant's notice of violation and notice of hearing did not provide notice of an intent to impose a fine for violation of the access provisions.

10. Article III, Section 2(j), Powers and Duties, of the Complainant's Bylaws, states in pertinent part that the Board of Directors may enforce the law and its rules by "levy[ing] reasonable fines against Unit owners for violations of the same after notice and an opportunity to be heard is given pursuant to the Act."

11. Article III, Section 2 of the Declaration authorizes the Board of Directors to charge the Unit Owners for the maintenance and repair of limited common elements.

Conclusions of Law

Respondent is in violation of the Association's Bylaws and the Maryland Condominium Act for failure to provide access to his unit to permit the Association to maintain the chimney flues.

Article III, Section 2 of the Association's Declaration, cited by Complainant as support for charging Management Agent fees and attorneys fees to Respondent, is inapplicable to management fees and attorneys fees and is inapplicable to past charges as this project to maintain the chimneys was undertaken as a common expense.

ORDER

Respondent is hereby ordered to provide access to his unit within fifteen (15) days after the date of this Order to permit the required maintenance to the chimney in his unit. He is directed to call the Association's Management Agent or legal counsel within ten (10) days after the date of this Order to arrange for a time certain for such access.

If he fails to provide access on the date and time agreed, or fails to contact the Association to arrange for access within ten (10) days, then the Association is hereby authorized to enter the unit thirty-one (31) days after the date of entry of this order, after providing at least five (5) days notice of the date and time the unit is to be entered. Notice shall be given by posting it on the unit door and by First Class Mail. If access is not provided on this date and time, the Association may use the services of a locksmith to gain entry on that date. The cost of the locksmith shall be the responsibility of the Respondent. Any other costs and attorneys fees related to enforcing this Order shall be the responsibility of Respondent. In addition, Respondent shall be responsible for additional costs, if any, to perform the maintenance of the chimneys if he fails to comply with this Order. Respondent shall also pay the \$200 fine imposed by the Association after notice and a hearing. Complainant's request for management and attorney's fees which accrued prior to the date of this order is denied.

Panel Member Kevin Gannon concurs in the foregoing decision and order. Panel Member Eric Smith did not participate in this hearing. Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Elizabeth L. Hileman, Panel Chairperson
Commission on Common Ownership Communities